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September 20, 2023

Via Email Only

Hon. Karin J. Immergut
U.S. District Court
1000 SW Third Avenue
Portland, OR 97204

Re: Oregon Firearms Federation, Inc., et al. v. Tina Kotek, et al.
US District Court for Oregon (Pendleton) Case No. 2:22-cv-01815-IM (lead case)

Dear Judge Immergut:

Defendants presented evidence from Brian DeLay in a filed declaration and at trial. Professor DeLay recently reviewed his trial testimony and has brought an error to our attention. At trial, Professor DeLay explained that between 1861 and 1871, the Winchester Repeating Arms Company produced 74,000 Henry and Winchester 1866 rifles. (6/7/23 Tr. 593:13-595:10 (ECF 258).) The majority of those rifles were exported to foreign militaries, leaving approximately 9,300 Henry and Winchester rifles in the United States. (*Id.*) Professor DeLay then estimated that, conservatively, there were five million firearms in the United States in this era. (*Id.*) Professor DeLay testified that the percentage of Henry and Winchester rifles in circulation in the United States was, therefore, “less than 0.002 percent.” (*Id.* at 595:11-22.) He also reported this figure in his declaration. (Decl. of Brian DeLay (ECF 118) ¶¶ 7, 60.) Dividing 9,300 by 5,000,000 yields 0.00186, or less than 0.002. However, Professor DeLay erroneously reported the decimal figure as a percentage. The correct percentage is 0.2%.

The Court reported Professor DeLay’s testimony in its Findings of Fact and Conclusions

Hon. Karin J. Immergut
September 20, 2023
Page 2

of Law. (Findings of Fact and Conclusions of Law (ECF 252) at 47, 82.) Defendants and Professor DeLay regret the error.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harry B. Wilson". The signature is fluid and cursive, with the first name "Harry" being the most prominent.

Harry B. Wilson
Special Assistant Attorney General

cc: All Counsel

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